

26 June 2020

STATEMENT

USA: Sanctions threat against ICC officials “fundamentally imperils” the rule of law

The Bar Human Rights Committee of England and Wales (“BHRC”) expresses its deep concern at the decision of the President of the United States to issue an Executive Order of 11 June 2020 (“the Order”). That Order declares that any attempt by the ICC to investigate or prosecute United States nationals, and the nationals of United States allied states, without their consent, constitutes an unusual and extraordinary threat to the national security and foreign policy of the United States, and declares a national emergency in relation to that threat. The Order authorises the use of sanctions against officials of the International Criminal Court (“ICC”), their families, and others deemed to have assisted the ICC’s investigations into alleged war crimes committed by United States nationals or nationals of ally States who are not parties to the Rome Statute.

This unprecedented declaration of coercive and punitive measures against ICC officials, their families, and more broadly those cooperating with the ICC investigation, constitutes a severe and improper interference with the independence of the ICC, and with the legal duties of its judges and lawyers involved in ICC proceedings. It substantially risks undermining victims’ access to justice at the ICC.

The announcement of such measures also risks emboldening others, including other States, who would seek to prevent accountability for the most serious crimes in the international legal order, through the deployment of intimidation and coercive measures against judges, lawyers, investigators, human rights defenders, witnesses and victims. It therefore poses a chilling risk to those individuals and also gravely undermines and jeopardises their work to uphold justice and the international rule of law.

Barristers are enjoined to act fearlessly under their code of ethics. As an organisation of barristers, we stand in solidarity with our legal colleagues at this

time and call on the international community to provide them and their families targeted by the Order with full protection in the pursuit of their vital work.

The purpose of the ICC is not to usurp the role of any State, in prosecuting crimes committed by its nationals including the United States and its allies. The ICC is a court of last resort. Its aim, and its mandate, is to complement and reinforce the measures taken by States to investigate and prosecute alleged perpetrators of the most serious crimes. It can only intervene when a State is unwilling or unable to investigate and prosecute the perpetrators of such crimes.

BHRC urges the United States to rescind the Order, to refrain from taking any coercive actions pursuant to its terms, and to stand by its often-stated commitment to defend the rule of law. By resorting to such extreme measures in targeting judges, lawyers and their families, a State which professes to stand for accountability risks appearing to seek to evade it.

BHRC Chair, Schona Jolly QC, said: *“The United States government’s actions to target and intimidate International Criminal Court staff, including lawyers and judges, undermines the integrity of the Court itself and places the international rule of law in serious jeopardy. America has repeatedly professed that it stands up for both the rule of law and for accountability; this Executive Order fundamentally imperils that rules-based order.”*

ENDS.

NOTES FOR EDITORS

1. For an interview with our spokesperson, please contact Josie Fathers, Project Coordinator on coordination@barhumanrights.org.uk or +44 (0)7854 197862
2. For more information on the Bar Human Rights Committee (BHRC), visit our website at <http://www.barhumanrights.org.uk>
3. The Bar Human Rights Committee of England and Wales (BHRC) is the international human rights arm of the Bar of England and Wales, working to protect the rights of advocates, judges and human rights defenders around the world. BHRC is concerned with defending the rule of law and internationally recognised legal standards relating to human rights and the right to a fair trial. It is independent of the Bar Council.